

## § 70.121

## 27 CFR Ch. I (4–1–97 Edition)

(c) *Activities of subordinates*—(1) *General*. For purpose of paragraph (a) of this section, the term “procures” includes,

(i) Ordering (or otherwise causing) a subordinate to do an act, and

(ii) Knowing of, and not attempting to prevent, participation by a subordinate in an act.

(2) For purposes of paragraph (c)(1) of this section, the term “subordinate” means any other person (whether or not a director, officer, employee, or agent of the taxpayer involved) over whose activities the person has direction, supervision, or control.

(d) *Taxpayer not required to have knowledge*. Paragraph (a) shall apply whether or not the understatement is with the knowledge or consent of the persons authorized or required to present the return, affidavit, claim, or other document.

(e) *Certain actions not treated as aid or assistance*. For purposes of paragraph (a)(1) of this section, a person furnishing typing, reproducing, or other mechanical assistance with respect to a document shall not be treated as having aided or assisted in the preparation of such document by reason of such assistance.

(f) *Penalty in addition to other penalties*. The penalty imposed by this section shall be in addition to any other penalty provided by law.

(26 U.S.C. 6701)

[T.D. ATF-251, 52 FR 19314, May 22, 1987. Redesignated by T.D. ATF-301, 55 FR 47606, Nov. 14, 1990]

### ABATEMENTS, CREDITS AND REFUNDS

#### *Procedure in General*

## **§ 70.121 Amounts treated as overpayments.**

(a) The term *overpayment* includes any payment of any internal revenue tax which is assessed or collected after the expiration of the period of limitation applicable thereto.

(b) An amount paid as tax shall not be considered not to constitute an overpayment solely by reason of the

fact that there was no tax liability in respect of which such amount was paid.

(26 U.S.C. 6401)

[T.D. ATF-251, 52 FR 19314, May 22, 1987. Redesignated by T.D. ATF-301, 55 FR 47606, Nov. 14, 1990]

## **§ 70.122 Authority to make credits or refunds.**

The regional director (compliance) or the Chief, Tax Processing Center, within the applicable period of limitations, may credit any overpayment of tax, including interest thereon, against any outstanding liability for any tax (or for any interest, additional amount, addition to the tax, or assessable penalty) owed by the person making the overpayment and the balance, if any, shall be refunded, subject to 26 U.S.C. 6402 (c) and (d) and the regulations thereunder, to such person by the regional director (compliance) or the Chief, Tax Processing Center.

(26 U.S.C. 6402)

[T.D. ATF-301, 55 FR 47615, Nov. 14, 1990]

## **§ 70.123 Claims for credit or refund.**

(a) *Requirement that claim be filed*. (1) Credits or refunds of overpayments may not be allowed or made after the expiration of the statutory period of limitation properly applicable unless, before the expiration of such period, a claim therefor has been filed by the taxpayer. Furthermore, under section 7422 of the Internal Revenue Code, a civil action for refund may not be instituted unless a claim has been filed within the properly applicable period of limitation.

(2) All claims relating to provisions of 26 U.S.C. enforced and administered by the Bureau, together with appropriate supporting evidence, shall be filed with the regional director (compliance), for the region in which the claimant is located, or, in the case of special (occupational) tax, with the Chief, Tax Processing Center. As to interest in the case of credits or refunds, see section 6611 of the Internal Revenue Code. See section 7502 for provisions treating timely mailing as timely filing and section 7503 for time for filing claim when the last day falls on a Saturday, Sunday, or legal holiday.